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HEMDAT YAMIM

ה'מ'ת'מ'ח'מ'

Parashat HaShavua

Yitro, 20 Shvat 5776

Caring about Justice for All

Harav Shaul Yisraeli – based on Siach Shaul, p. 234-235

Bnei Yisrael arrived at Mt. Sinai with an encampment that is famously described as “like one man with one heart” (Rashi, Shemot 19:2). The unity, which was preparatory for the receiving of the Torah, is not just preparation but is the essence of the Torah. Unity in the world and in interpersonal relationships is not just a convenient means. It is the purpose and the essence of life for all that breathes.

That which Hashem is one is not just that He is unique numerically; it is an essential difference from other beings. His name is peace, just as His seal is truth. The self of a physical animalistic being relates to its interest in fulfilling physical desires, even if this contradicts the welfare of others. For us, the self is to be dedicated to that which is good, and this certainly includes active concern for others. It is not just a matter of fighting that which is bad, but of having goodness serve as an innate value.

The whole Torah can be summed up with “Love your friend as yourself” (Vayikra 19:18). That is not only a message for one who has come to convert (see Shabbat 31a). Once a person is inspired to care, even while he is enjoying tranquility, that there is someone in some place who needs him, that is the time that he cannot make due with a life of idolatry, where obtaining what one wants is the focus.

The internal quest for justice will not be satisfied until all the world is full of justice. A person does not want to see himself as an exception in creation, and if he believes in justice, he wants it to be pervasive.

He will want to see how Hashem handles matters of justice, although it is possible “to see Hashem” only from the back (see Shemot 33:23). When we are at the end of a historical episode and we want to check how things were divinely handled, we should be able to find the unity and the great hand of Hashem in it. We saw what happened to the Parohs of the world, to Amalek, Sisra, Sancheriv, and Titus. These were all-powerful people who eventually had to pay the price of their deeds. In historical hindsight we see how even these evil people played a role in what needed to happen in the world. However, we cannot see “Hashem’s face” (see *ibid.*). We have very limited vision. While we think we now see no justice, at the end we will be able to look back and get a better look at the whole picture.

Sometimes our more noble self dozes off and we see only ourselves and that which we want from the perspective of a lower level. We do not see the unity of creation and the imprint of Hashem within it. We break the world into little pieces in which each one fights for his survival. Human society becomes like that of the animal world. Then we are prone to asking the question, “Is Hashem in our midst or is He not?” The very question shows that the evil of the likes of Amalek, whose essence is that “he did not fear Hashem,” exists.

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Ask the Rabbi

by Rav Daniel Mann

Partial Reneging on Hiring

Question: I am self-employed in a service providing field. The Cohens hired me two months in advance for a block of time at high season. I told them I needed to know exactly when I was needed, and as a result I did not put out the word I was available for that time. Soon before I was supposed to start working, they told me they were cutting back to a fraction of the time. Do I have a financial claim against them? While a learned person told me I can get two thirds of the projected salary, I want to hear from a Rav who adjudicates financial matters.

Answer: Members of our *beit din* are usually careful not to give advice to one side or give the impression we agree with his claims without hearing the other side. However, I believe you sincerely want to know if it is appropriate to make a claim and are not asking to gain an advantage. Therefore, I will give you some perspective to help you decide how to resolve your issues with the Cohens.

One who commits to hire a worker is bound financially not to cancel (or cut back, which is equivalent) the work order, only if there was an act that finalized (*kinyan*) the hiring. Beginning of work, starting with traveling to the job, is a special *kinyan*-equivalent for workers (Bava Metzia 76b). However, if the "employer" wants to back out between the commitment and the beginning of the work, the "worker" has no monetary claim, but only a moral complaint (*taromet*) (see *ibid.* 75b; Shulchan Aruch, Choshen Mishpat 333:1).


Rishonim ask that the employer should be obligated because he caused the worker the damage of a lost employment opportunity. Two distinctions are made between cases where the worker has claims and when he does not. 1) Can the worker find work after being informed? (Tosafot, Bava Metzia 76b); 2) Would he have found a different job originally if the employer did not hire him? (see *Maggid Mishneh*, Sechirut 9:4). The Shulchan Aruch (*ibid.* 2) rules that only when both factors are in the worker's favor is he entitled to compensation for the loss. You imply that you did not have enough warning to find an alternative job (we do not know if the Cohen's agree). You imply that you did not turn down work offers because of the Cohens, but that your chances to find other jobs would have been much greater if you had known you needed work and "put out the word."

There is little discussion about cases where the extent to which the work order was responsible for not receiving other work is unclear. One also should consider that many say that the reneging employer is not legally culpable because he is not damaging but indirectly preventing profit (see K'tzot Hachoshen 333:2). Some say obligation before *kinyan* is only a Rabbinic obligation to help workers or an assumption of tacit agreement (see *Netivot Hamishpat* 333:3). Putting everything together, unless you demonstrate convincingly that the Cohens' actions "robbed you" of otherwise expected employment, it is hard to extract money in *beit din*.

Your moral grounds are much stronger. We mentioned the idea of *taromet*. The extent of the moral complaint is impacted by the reason the Cohens committed themselves and changed their minds. Was there a sudden change in their needs? Was it beyond their control? Could they have informed you earlier?

The idea of paying two thirds is due to the fact that people would take a cut in salary to receive vacation (Bava Metzia 76b). If the alternative job you would likely have found is for less pay than the Cohens' job, you would again have to reduce your claim.

It sounds (albeit without hearing the Cohens) that it would be *mentchlach* for them to pay you an appropriate amount for harming your employment situation by their actions, but it is hard to say how much. It is not clear if and how much you could demand. Considering the many types of "prices" of litigation (including endangering your professional reputation), I urge you to consider the possibility that dropping the matter or raising your complaint pleasantly (perhaps presenting our discussion could help) serves you better.



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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

Emotional Attachment is Not Enough

(condensed from Ein Ayah, Shabbat 2:140,141)

Gemara: There was another story of a non-Jew who came before Shammai and requested of him: "Convert me on condition that you will teach me the whole Torah while standing on one foot." Shammai pushed him with the *amat habinyan* (building measuring stick) that was in his hand.

Ein Ayah: One of the foundations of the Torah is to improve and embellish the natural emotion for good and justice that flows from the divine light in a person's soul. Because man has limited intellectual vision, he cannot span the many actions that are necessary to be done or avoided in order to actualize true good in the world. Therefore, he needs divine guidance, as Hashem is intimately aware of everything that exists in the world, from its beginning to its end, and is aware of what needs to be done to achieve full depth and breadth.

It is entrenched in the heart of the wise that the goal of the Torah should be justice and straightness. These are concepts that a person recognizes generally with his intellect and natural emotions. People, therefore, sometimes mistakenly think that just as one intuits the significance of the general principles, he should also be able to sense their connection to the specific laws of the Torah. Actually, the general principles are "planted" in the very nature of the soul, whereas the details are connected to the depth of Torah, which requires a great deal of study. Even after great efforts, the latter cannot be fully grasped because of its linkage to the full, great light of Hashem's mind.

Intellect and emotion are man's two legs in the spiritual realm, enabling him to pass through the land of life and perceive good and truth. The non-Jew who came before Shammai to convert was attracted to goodness and profundity by the influence of Greek thought. He wanted to appreciate the entire Torah with all its details just on the basis of emotion, which is what he meant by learning everything while standing on one leg.

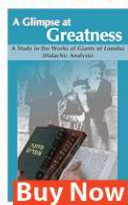
Shammai's choice of pushing him away with an *amat habinyan* has symbolic significance. In comparing emotion to many detailed good actions, we can use, as a simile, a measuring stick and a blueprint. Even though the measuring stick is of use when one builds a building, it is not one of the instruments that one uses to actually build it. One just uses it to determine how big the plot is and determine the dimensions of the building when it will be complete. This is different from specific actions and instruments that actually build the building.

Similarly, while emotion helps determine the general picture of what and where our spiritual building will be, there is a tremendous amount of crucial detailed action that has to be taken to bring it to fruition. The emotions can only determine the bottom level of the edifice of the Torah one is to internalize.

Only after the fulfillment and in-depth study of Torah will one's emotions reach the level that he can start to appreciate the connection between the specific *mitzvot* and the overarching principles of the Torah. Even so, the *amat habinyan* is designed only to measure that which is going to be done in the future or that which was already done. It is not an instrument that carries out the building. In Torah, we must internalize that only belief in Hashem and love of Torah and *mitzvot*, which are the path that Hashem set out for us, are the instruments of the fulfillment of Torah. Emotion can only capture the general element of the matter, but a greater level exists.

When Shammai saw that this conversion candidate came with a weak, emotional interest, which was not fit for a life of building a Torah lifestyle, he pushed him with the *amat habinyan*. This showed that the person was trying to build a great building with nothing more than a measuring stick.

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P'ninat Mishpat

Counting to Four Generations

(based on Shut Noda B'Yehuda I, Choshen Mishpat 38)

Case: My grandfather, R. Gershon, left a significant amount of money. The principal was to remain untouched and the profits were to be divided among his descendants who occupied themselves in Torah study “until the fourth generation.” At that time, the principal is to be divided among all his descendants, with half going to the descendants of his son and half to the descendants of his daughters. Presently, there are great-grandchildren of R. Gershon, which is the fourth generation if one counts R. Gershon as the first. The Torah-studiers claim that this only the third generation and that the original arrangement should continue. They bring a proof from King Zecharia, who was the fifth generation including Yehu, and Yehu was promised only “*bnei ribei'im* (sons of the fourth generation)” sitting on the throne (Melachim II, 10:30). The other descendants cite proof from the *pasuk* from *Brit Bein Habetarim*: “The fourth generation will return here” (Bereishit 15:16).

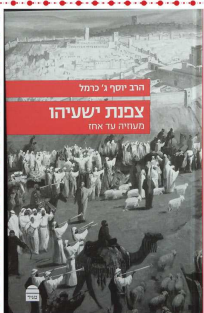
[The ruling is a fascinating interplay between halacha and Biblical analysis]

Ruling: It is not clear why the other inheritors think there is a proof from the fourth generation mentioned in Bereishit, as how do they know that this is not great-great grandchildren. They must understand the *pasuk* like the Ibn Ezra does – the fourth generation from the time they went down to Egypt (ibid. 13). According to him, Kehat (Moshe's grandfather) was the first generation and Moshe and Aharon's sons were the fourth, meaning that Kehat is included in the count of four.

If that is what they mean, why should one prefer the Ibn Ezra's commentary over Rashi and the Ramban. Rashi says that the count starts with Yaakov, who went down to Egypt, and continues with Yehuda, Peretz, Chetzron, and Kalev; thus, the first generation is not counted. The Ramban says that the four generations belong to the Amorites, who were to be removed from the land after their sin was ready for punishment. Ostensibly, then, one cannot prove anything regarding our question. If anything, from the Ramban it sounds like the progenitor is not counted, as Hashem is willing to wait four generations for repentance, after which time he punishes the fifth generation. This is in line with Hashem remembering the sin of the fathers for “son, and sons of sons, a third generation, and a fourth” (see Shemot 34:6).

How then can the other inheritors expect to go against Rashi and the Ramban, who exceeded the Ibn Ezra both as commentators and as halachists? Even according to the Ibn Ezra, Yaakov was one of the four generations, which is different from talking about four generations of descendants of Yehu or, in our case, of R. Gershon. I would anyway explain the *pasuk* differently, considering that the count should be from Yitzchak, who begins the period of being “foreigners in a land not their own,” and that it is going on Serach the daughter of Asher, son of Yaakov, son of Yitzchak.

There are different indications from the language of the will, but the most careful reading of both the will and the standard understanding of the *p'sukim* is that the fourth generation does not include the person who is talking or is being discussed. This should be the basis for determining when the will's clause comes into play, although all sorts of questions about its implementation remain.



Tzofnat Yeshayahu- Rabbi Yosef Carmel

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